



Comptroller General
of the United States

Washington, D.C. 20548

144360

Decision

Matter of: Panasonic Communications & Systems, Co.--
Reconsideration

File: B-243855.2

Date: July 10, 1991

Jeffrey D. Blackmer for the protester.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration of prior decision is denied where
protest of specifications accompanying proposal does not
constitute timely protest of alleged solicitation
improprieties.

DECISION

Panasonic Communications & Systems Co. requests reconsidera-
tion of our May 13, 1991, dismissal of its protest challenging
the terms of request for proposals No. DAAC09-91-R-0012,
issued by the Department of the Army for video equipment. We
dismissed the protest as untimely because it was not filed
prior to the closing date for the receipt of proposals.

We affirm the dismissal.

Panasonic enclosed with its initial proposal, due March 11,
1991, to the Army a cover letter dated March 8, in which it
objected to the agency's requirement for the equipment to be
Betacam and Betacam SP format, contending it was unduly
restrictive. Panasonic received notification of the Army's
denial of its protest on April 16. Panasonic then filed a
protest with our Office on April 30, 1991.

Our Bid Protest Regulations provide that protests based upon
alleged improprieties in a solicitation which are apparent
prior to the closing date for receipt of proposals must be
filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1991); Allen
Organ Co., B-231473, June 9, 1988, 88-1 CPD ¶ 552. Thus,
Panasonic's protest of the solicitation requirements as
unduly restrictive had to be filed prior to the closing date.
Here, Panasonic filed its protest with its proposal. Our

Office does not consider a protest submitted in a proposal as timely because the contracting agency is under no obligation to open or read proposals until after the closing date and, therefore, has no notice prior to closing of a solicitation impropriety alleged in such a protest. Paramount Sys., Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646.

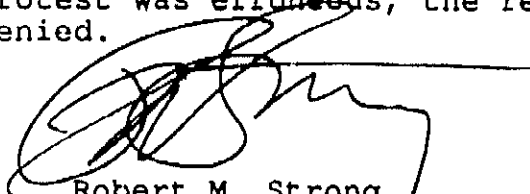
Where, as here, a protest is filed initially with the contracting agency, our Office will consider a subsequent protest only if the initial protest was timely filed, and the subsequent protest is filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Since the protest to the agency was not timely filed, we dismissed the subsequent protest to our Office.

On reconsideration, Panasonic argues that if its protest were untimely, it falls under the good cause and significant issue exceptions found in our Bid Protest Regulations. 4 C.F.R. § 21.2(c). The good cause exception is limited to circumstances where some compelling reason beyond the control of the protester prevents the protester from submitting a timely protest. Commercial Energies, Inc., B-242261.2, Mar. 21, 1991, 91-1 CPD ¶ 312. Panasonic's decision to submit its protest with its proposal was well within its control. In addition, our Office will not consider the merits of an untimely protest by invoking the significant issue exception, where the protest does not raise an issue of first impression or one that would be of widespread interest to the procurement community. Keco Indus., B-238301, May 21, 1990, 90-1 CPD ¶ 490. The issue of unduly restrictive specifications has been addressed by our Office on numerous occasions. See, e.g., AUTOFLEX, Inc., B-240012, Oct. 16, 1990, 90-2 CPD ¶ 294; DBA Sys., Inc., B-237596, Feb. 23, 1990, 90-1 CPD ¶ 214. While we recognize the importance of the matter to the protester, we do not think the specific issue raised in this protest is of widespread interest to the procurement community. Accordingly, we will not invoke the good cause or the significant issue exceptions here.

Panasonic also contends that the dismissal was improper because we dismissed the protest without giving Panasonic an opportunity to respond to the Army's May 10 request for summary dismissal. Our dismissal of Panasonic's protest was based on information provided by the Army that clearly showed Panasonic's agency-level protest was not timely filed.

Our Bid Protest Regulations provide that we may dismiss a protest at the time the propriety of a dismissal becomes clear based upon information provided by the contracting agency. 4 C.F.R. § 21.3(m). Consequently, our dismissal of Panasonic's protest prior to receipt of Panasonic's comments

was proper. See AOI Sys., Inc.--Recon., B-240768.2, Oct. 16, 1990, 90-2 CPD ¶ 300. Since the protester has presented no information establishing that our prior dismissal of the protest was erroneous, the request for reconsideration is denied.



Robert M. Strong
Associate General Counsel